

Message Text

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ORIGIN ERDA-07

INFO OCT-01 NEA-10 ISO-00 OES-07 L-03 NRC-07 AID-05
IO-13 ACDA-10 JUSE-00 CIAE-00 INR-07 NSAE-00
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U.S.ERDA/AIA: J VANDERRYN
L/OES: C SIEGAL
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FM SECSTATE WASHDC
TO AMCONSUL BOMBAY IMMEDIATE
INFO AMEMBASSY NEW DELHI IMMEDIATE

UNCLAS STATE 109391

E.O. 11652:N/A

TAGS: TECH, ENRG,PARM, IN

SUBJECT: TARAPUR FUEL STORAGE

REFERENCES: (A) STATE 81468; (B) BOMBAY 963

1. REQUEST AMCONSUL COMMUNICATE TO SHAH THE FOLLOWING USG
RESPONSE TO GOI COMMENTS (AS STATED REFTTEL (B) REGARDING
PROPOSED ERDA-IAEC AGREEMENT (REFTTEL A) CONCERNING
FEASIBILITY STUDY OF INCREASING SPENT FUEL STORAGE CAPACITY
OF TARAPUR. UNDER REVISED AGREEMENT AS SET OUT BELOW,
G.E. NO LONGER REQUIRES SEPARATE INDEMNITY CONTRACT WITH
GOI. PLEASE ADVISE SOONEST OF GOI RESPONSE.

2. U.S. ACCEPTS GOI REVISED TITLE AND PREAMBLE AS NOTED
REFERENCE B PARA 1.
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3. U.S. ACCEPTS GOI REVISION OF CLAUSE 1 AS STATED REFTTEL
B PARA 1. SINCE SEPARATE G.E.-GOI AGREEMENT NO LONGER
NEEDED, REFERENCE TO THAT AGREEMENT AS AN APPENDIX SHOULD
BE OMITTED.

4. U.S. ACCEPTS GOI REVISION OF CLAUSE 2 AS NOTED REFTTEL B.

5. U.S. ACCEPTS GOI REVISION OF CLAUSE 4 AS NOTED REFTTEL
B. GOI PROPOSED ADDITION OF NEW CLAUSE 4A CONCERNING
SUPPLY OF DESIGN BASIS DRAWINGS AND OTHER INFORMATION IS

ACCEPTABLE PROVIDED THAT A CLAUSE IS ADDED AT THE BEGINNING OF NEW PARA 4A AS FOLLOWS: "CONSISTENT WITH THE PROVISIONS OF CLAUSES 7 AND 8 HEREIN."

6. AS NOTED REFTTEL B GOI HAS PROPOSED A SUBSTANTIVE ADDITION TO CLAUSE 5 REQUIRING U.S. TO "ENSURE THAT THE RECOMMENDATIONS ARE IN CONFORMITY WITH THE APPLICABLE STANDARDS OF THE U.S. NUCLEAR REGULATORY COMMISSION AND WITH THOSE AS MAY BE SPECIFICALLY ADVISED BY DAE." FOR FOLLOWING REASONS U.S. CANNOT AGREE TO SUCH A SWEEPING COMMITMENT. CONFORMITY WITH NRC REGULATIONS CAN ONLY BE DECIDED BY NRC ITSELF THROUGH DECISION OF APPROPRIATE NRC TRIBUNAL IN SPECIFIC CASE OR BY DECISION OF A U.S. COURT IF AN APPEAL IS TAKEN. REQUEST CONGEN ADVISE IAEA OF U.S. DIFFICULTY WITH SUBJECT LANGUAGE AND OFFER SUBSTITUTE LANGUAGE ALONG FOLLOWING LINES: AS APPROPRIATE THE REPORT TO BE PROVIDED UNDER THIS AGREEMENT WILL ADDRESS THE RELATIONSHIP OF THE RECOMMENDATIONS CONTAINED THEREIN TO APPLICABLE U.S. CRITERIA.

7. WITH REGARD TO GOI COMMENTS ON PARA 7 GOI SHOULD BE ADVISED OF ERROR IN TEXT OF PARA 7 AS TRANSMITTED REFTTEL A. CORRECT TEXT OF 7A 1 II, IS AS FOLLOWS: "(II) THE GOVERNMENT OF INDIA SHALL ACQUIRE ALL RIGHT, TITLE AND INTEREST IN AND TO ANY SUCH INVENTION OR DISCOVERY IN ITS UNCLASSIFIED

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OWN COUNTRY, PROVIDED HOWEVER THAT ERDA SHALL RECEIVE A NONEXCLUSIVE, IRREVOCABLE, PAID-UP LICENSE, WITH THE RIGHT TO GRANT SUB-LICENSES THEREUNDER." AS CORRECTED SUBPARAS I AND II ARE NOT REDUNDANT AND GOI PROBLEM WITH REFERENCE TO ERDA IN THIRD LINE OF SUBPARA II (AS NOTED PARA 7 REFTTEL B) SHOULD BE SOLVED BY CORRECTED LANGUAGE QUOTED ABOVE.

8. U.S. AGREES TO GOI REVISION OF CLAUSES 8A AND 8B AS NOTED REFTTEL B.

9. AS A GENERAL COMMENT WITH REGARD TO PATENT AND EXCHANGE OF INFORMATION CLAUSES, PARAS 7 AND 8 REFTTEL A, GOI SHOULD BE ADVISED THAT SOME FURTHER REVISIONS MAY BE NECESSARY TO CONFORM THESE PARAS WITH TERMS OF GE/ERDA CONTRACT WHICH WILL NOW BE NEGOTIATED.

10. U.S. ACCEPTS GOI ADDITION TO CLAUSE 9 AND NOTES, HOWEVER, THAT WE HAVE REVISED THAT PARAGRAPH. TAKING INTO ACCOUNT GOI REVISION PLUS OUR OWN ADDITIONS, CLAUSE 9 NOW READS AS FOLLOWS: "GOVERNMENT OF INDIA AGREES TO

INDEMNIFY AND HOLD HARMLESS ERDA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND PERSONS ACTING ON THEIR BEHALF (INCLUDING GENERAL ELECTRIC COMPANY AND ITS SUBCONTRACTORS) AGAINST ANY AND ALL DAMAGES, LIABILITIES, OR

COSTS INCURRED BY IAEC, THE GOVERNMENT OF INDIA OR ANY OTHER PERSON WHICH MAY ARISE FROM THE USE OR APPLICATION OF THE INFORMATION PROVIDED BY ERDA OR ITS CONTRACTORS TO IAEC UNDER THIS AGREEMENT; PROVIDED THAT INDEMNITY WILL NOT APPLY TO ANY LIABILITY FOR VIOLATION BY IAEC OR GOVERNMENT OF INDIA OR PROPRIETARY RIGHTS OR PATENT RIGHTS WITH RESPECT TO ANY PROPRIETARY OR PATENTED INFORMATION PROVIDED BY ERDA OR ITS CONTRACTORS, WHICH PROPRIETARY OR PATENTED INFORMATION HAS NOT BEEN SO IDENTIFIED."

11. PARA 10 REFTTEL A, SHOULD BE DELETED AS UNNECESSARY
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SINCE GE NO LONGER REQUIRES A SEPARATE AGREEMENT GOI.

12. TO SATISFY GOI STATEMENT THAT AN ARBITRATION CLAUSE IS CUSTOMARY, WE PROPOSE ADDITION OF AN ARBITRATION CLAUSE (TO BE NUMBERED CLAUSE 12) TO READ AS FOLLOWS:

"12 - ARBITRATION.

A. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, ALL DISPUTES CONCERNING QUESTIONS OF FACT WHICH MAY ARISE UNDER THIS AGREEMENT AND WHICH ARE NOT DISPOSED OF BY MUTUAL AGREEMENT, SHALL BE REFERRED TO ARBITRATION BY A BOARD COMPOSED OF THREE ARBITRATORS. ONE OF SUCH ARBITRATORS SHALL BE APPOINTED BY ERDA, ONE SHALL BE APPOINTED BY IAEC, AND THE THIRD ARBITRATOR SHALL BE SELECTED BY THE FIRST TWO. IN THE EVENT THAT THE FIRST TWO ARBITRATORS SO SELECTED ARE UNABLE TO AGREE UPON A THIRD ARBITRATOR, THEN THE ADMINISTRATOR OF ERDA AND DIRECTOR OF THE IAEC SHALL MUTUALLY AGREE UPON AND DESIGNATE THE PERSON TO ACT AS THE THIRD ARBITRATOR.

THE ARBITRATION PROCEEDINGS SHALL BE IN ACCORDANCE WITH THE RULES ESTABLISHED BY THE AMERICAN ARBITRATION ASSOCIATION FOR COMMERCIAL ARBITRATION. THE DECISION OF A MAJORITY OF THE ARBITRATORS ON THE ARBITRATION BOARD SHALL BE FINAL AND BINDING UNLESS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO HAVE BEEN FRAUDULENT, OR CAPRICIOUS, OR ARBITRARY, OR SO GROSSLY ERRONEOUS AS NECESSARILY TO IMPLY BAD FAITH OR NOT SUPPORTED BY SUBSTANTIAL EVIDENCE. ALLOCATION OF THE COSTS OF ARBITRATION SHALL BE AS DETERMINED BY THE BOARD ARBITRATORS; PROVIDED, HOWEVER, THAT NEITHER PARTY SHALL BE OBLIGATED TO PAY THE COSTS OF THE OTHER PARTY'S ARBITRATOR.

B. THIS "ARBITRATION" CLAUSE DOES NOT PRECLUDE CONSIDERATION OF LAW QUESTIONS IN CONNECTION WITH DECISIONS PROVIDED FOR IN PARA A ABOVE; PROVIDED, THAT NOTHING IN
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THIS AGREEMENT SHALL BE CONSTRUED AS MAKING FINAL THE
DECISION OF THE ARBITRATION BOARD ON A QUESTION OF LAW"

13. IN VIEW OF DELETION OF CLAUSE 10, CLAUSES 11 AND 12
SHOULD BE RENUMBERED AS 10 AND 11.

14. AS A FINAL CLAUSE, TO BE NUMBERED 13, ADD THE
FOLLOWING: "THE SIGNATORIES TO THIS AGREEMENT REPRESENT
THAT THEY HAVE COMPLETE AUTHORITY TO COMMIT THEIR
RESPECTIVE GOVERNMENTS TO ALL THE UNDERTAKINGS SET FORTH
IN THIS AGREEMENT."

15. WITH REGARD TO NEW CLAUSE 13 ABOVE, USG AND GE NEED
AUTHORITATIVE WRITTEN ASSURANCE FROM APPROPRIATE ENTITY
OF GOI THAT THE INDEMNITY PROVISIONS OF CLAUSE 9 ARE VALID
AND ENFORCEABLE AGAINST GOI UNDER THE CONSTITUTION AND
OTHER LAWS OF INDIA AND THAT THE PERSON SIGNING THE
AGREEMENT ON BEHALF OF GOI HAS COMPLETE AUTHORITY UNDER
THE CONSTITUTION AND OTHER LAWS OF INDIA TO BIND GOI TO
SUCH AN AGREEMENT. GOI OPINION ON AUTHORITY OF ITS
SIGNATORY SHOULD INCLUDE REFERENCES, AND COMMENTARY AS
NECESSARY, TO PERTINENT INDIAN LAW AND ADMINISTRATIVE
REQUIREMENTS. USG WILL PROVIDE GOI WITH WRITTEN OPINION
REGARDING AUTHORITY OF PERSON SIGNING FOR USG IF GOI SO
DESIRES. CHRISTOPHER

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<< END OF DOCUMENT >>

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